

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement
(916) 322-5662 322-5660 322-5901 322-6441

October 12, 1984

Charles R. Gill
Deputy City Attorney
City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 92010

Re: Your Request for Advice on
Behalf of David Malcolm; Our
Advice No. A-84-231

Dear Mr. Gill:

Your letter requests advice on the following situation and specifically inquires as to the application of the Commission's Nord Opinion (8 FPPC Opinions 6) to this situation.

FACTS AND QUESTION

City of Chula Vista Councilman David Malcolm is in the process of establishing a partnership wherein Mr. Malcolm will be a general partner controlling more than ten percent (10%) of the partnership.^{1/} One of the limited partners is a contractor active in the County of San Diego, including the City of Chula Vista. The contractor's interest will be four percent (4%) of the partnership. Councilman Malcolm and the Chula Vista City Attorney's office is concerned that Mr. Malcolm will be required to abstain when the contractor is a participant in hearings before the City Council due to a potential conflict.

In addition to the above request, Councilman Malcolm's brother-in-law may be processing land development permits with the City. Councilman Malcolm

^{1/} In a subsequent telephone conversation, you have advised that Mr. Malcolm will, in fact, be a "controlling general partner" and that he is "putting together" the partnership endeavor by seeking investors.

desires to verify that in the absence of any financial dealings between himself and his brother-in-law, he would be able to participate in the decision on such applications.

ANALYSIS

With regard to your first question, the Nord Opinion deals with the financial interrelationships of partners. Specifically, Nord involved the interrelationship between a limited partner and a controlling general partner, holding that the limited partner had an investment in the controlling general partner in a closely held limited partnership having one or two controlling general partners. Footnote 16 of the opinion points out that the converse is not true; however, a limited partner may become a source of income to a controlling general partner.

In making his investment in the controlling general partner, the limited partner may well pay the money to the general as he "buys in"; that money is "income" to the general partner. Thus, since Mr. Malcolm is forming the partnership and is selling percentage interests to others, each of them would become a source of income (assuming a \$250 payment) to Mr. Malcolm.

Of course, if only one payment is made by a partner in "buying in," once 12 months have passed from the payment, that partner would cease to be of a source of income to Mr. Malcolm.

In Mr. Malcolm's case, since he will be the controlling general partner, the contractor will be a source of income to him if the contractor's payment exceeds \$250. If there is only one payment, 12 months later the potential for disqualification would end.

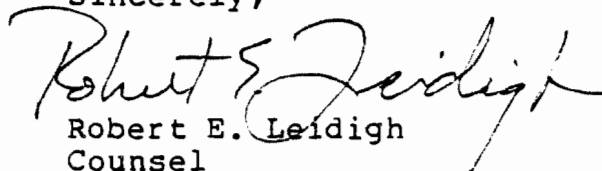
Turning to the second question which you have posed, the non-economic familial relationship between Mr. Malcolm and his brother-in-law does not require Mr. Malcolm to disqualify himself. At present there is no requirement for disqualification in such relationships. However, our advice is specifically limited to the provisions of the Political Reform Act (Government Code Sections 81000-91014). As noted in Attorney General's Opinion No. CV76-73, 59 Ops. Atty. Gen. 604, at 614, the Political Reform Act does not nullify common law principals of

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conflicts of interest, where those principals do not conflict with the provisions of the Act. Since the Act is silent on conflicts based upon familial relationships, there is no pre-exemption here. However, we are not in a position to comment on whether or not common law principles require disqualification in these circumstances. You may wish to seek the advice of the Attorney General.

If you have any questions regarding this letter, please contact me at 916/322-5901.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:km



The City of Chula Vista

Office of the City Attorney

(619) 691-5037 8 57 AM '84

August 31, 1984

Barbara Milman
General Counsel
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Re: Partnerships and Section 18702 of Title 2 of the
California Administrative Code

Dear Ms. Milman:

This request for an opinion results from a telephonic discussion between the undersigned and Janis McLean on August 30, 1984.

City of Chula Vista Councilman David Malcolm is in the process of establishing a partnership wherein Mr. Malcolm will be a general partner controlling more than ten percent (10%) of the partnership. One of the limited partners is a contractor active in the County of San Diego, including the City of Chula Vista. The contractor's interest will be four percent (4%) of the partnership. Councilman Malcolm and the Chula Vista City Attorney's office is concerned that Mr. Malcolm will be required to abstain when the contractor is a participant in hearings before the City Council due to a potential conflict.

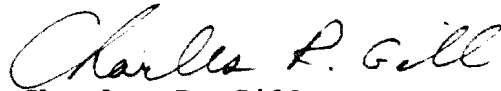
During the undersigned's telephonic discussion with Ms. McLean, the recent Fair Political Practices Commission opinion requested by Steven F. Nord was reviewed. (8 FPPC Opinions 6). The factual situation presented by the Nord opinion is the reverse of the situation presented in this request. Footnote No. 16 of the Nord opinion states that a general partner would not have an investment interest in a limited partner, although the limited partner may be a source of income to the general. Accordingly, the Nord opinion indicates that Councilman Malcolm would not have a conflict when the contractor is before the City Council due to an investment in a "business entity". However, it is unclear whether or not the contractor's participation in the partnership would be a source of income to Councilman Malcolm. Therefore, we request that the FPPC provide an opinion as to the parameters of when a limited partner is a source of income to a general partner.

Barbara Milman
FPPC
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In addition to the above request, Councilman Malcolm's brother-in-law may be processing land development permits with the City. Councilman Malcolm desires to verify that in the absence of any financial dealings between himself and his brother-in-law, he would be able to participate in the decision on such applications. A review of this issue by this office leads to the conclusion that the regulations and the Government Code only prohibit decisions involving a wife and dependent children, or the immediate family. (Gov. Code §87103[d]; 2 CAC §18702). Could you please confirm this interpretation?

Should you have any questions regarding this matter, please do not hesitate to call.

Very truly yours,


Charles R. Gill
Assistant City Attorney

CRG:clb

cc: Councilman David Malcolm